

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

JOHN DAVID SICKLES

§

VS.

§

CIVIL ACTION NO. 1:08cv343

DIRECTOR, TDCJ-CID

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

John David Sickles, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to applicable orders of this court.

The respondent has filed a motion asking that the petition be dismissed as barred by the applicable statute of limitations. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the records, pleadings and all available evidence. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

Petitioner states the state created an impediment to his filing his petition sooner because he only has a third or fourth grade education and was taking medication for a mental illness. The court will liberally construe the objections as also asserting petitioner is entitled to invoke the doctrine of equitable tolling.

After considering the objections, the court is of the opinion they are without merit.<sup>1</sup> Petitioner has failed to demonstrate the state took unconstitutional action to prevent him from filing his petition earlier. In addition, petitioner is not entitled to equitable tolling. He has failed

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<sup>1</sup> The court notes the Report mistakenly states petitioner's state application for writ of habeas corpus was denied on October 16, 2008. The application was actually denied on October 10, 2007.

to demonstrate he was mentally incompetent to file his petition for a sufficient amount of time to make his filing timely even if he were granted equitable tolling. Further, as petitioner waited more than six months after his state application was denied to file his federal petition, he slept on his rights for a sufficient period of time to prevent him from being entitled to equitable tolling

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. The motion to dismiss is **GRANTED**. A final judgment shall be entered dismissing the petition.

**SIGNED** this the **22** day of **September, 2009**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield  
United States District Judge